

1 Mark H. Gunderson, Esq. (SBN: 2134)
2 Catherine A. Reichenberg, Esq. (SBN: 10362)
GUNDERSON LAW FIRM
3 5345 Kietzke Lane, Suite 200
Reno, Nevada 89511
4 Telephone: (775) 829-1222
Facsimile: (775) 829-1226

5 Deborah A. Klar, Esq. (SBN: CA 124750)
6 Teri T. Pham, Esq. (SBN: CA 193383)
7 Tuneen E. Chisolm, Esq. (SBN: CA 211741)
LINER YANKELEVITZ
8 SUNSHINE & REGENSTREIF LLP
1100 Glendon Avenue, 14th Floor
9 Los Angeles, California 90024-3503
Telephone: (310) 500-3500
Facsimile: (310) 500-3501
10 ADMITTED PRO HAC VICE

11 Attorneys for Plaintiffs
DENNIS MONTGOMERY and the MONTGOMERY
FAMILY TRUST

13 UNITED STATES DISTRICT COURT

14 DISTRICT OF NEVADA

15
16 DENNIS MONTGOMERY and the) Case No. 3:06-CV-00056-PMP-VPC
MONTGOMERY FAMILY TRUST,)
17 Plaintiffs,) BASE FILE
vs.)
18 ETREPID TECHNOLOGIES, LLC; WARREN) (Consolidated with Case No. 3:06-CV-
TREPP; and the UNITED STATES) 00145-PMP-VPC)
20 DEPARTMENT OF DEFENSE,)
21 Defendants.) PLAINTIFFS' EVIDENTIARY
22) OBJECTIONS TO: (1) DECLARATION
AND RELATED CASES.) OF MICHAEL FLYNN
23) IN RESPONSE TO GOVERNMENT
24) MOTION TO COMPEL
25) ENFORCEMENT OF PROTECTIVE
26) ORDERS; AND (2) SUPPLEMENTAL
27) DECLARATION OF MICHAEL FLYNN
28) IN RESPONSE TO MONTGOMERY'S
OPPOSITION TO THE
GOVERNMENT'S MOTION

1 Plaintiffs Dennis Montgomery and the Montgomery Family Trust (the “Montgomery
 2 Parties” or “Plaintiffs”) object to the following evidence submitted by non-party Michael Flynn
 3 (“Flynn”) in Response to the Government’s Motion to Enforce Protective Order (the “Motion”).

4 **Declaration of Michael Flynn in Response to Government’s Motion (“Initial Flynn**
 5 **Declaration”)**

6
 7 Plaintiffs object to the Initial Flynn Declaration in its entirety on the ground that Flynn
 8 lacks standing to file this declaration since the Government’s Motion does not cause or threaten to
 9 cause him any injury.

10 Plaintiffs further object to the Initial Flynn Declaration on the following grounds.

11 **EVIDENCE:**

12 1. Paragraph 2, page 2, lines 3-8: “Based
 13 on my knowledge of events, and the
 14 presence of third parties during many of
 15 those events, I also believe that the
 16 attorney client privilege has either been
 17 waived by Montgomery, or is subject to
 18 other exclusions and exceptions. I
 19 believe Montgomery comprehensively
 20 waived the privilege when he sued me in
 21 Los Angeles falsely accusing me of
 22 fraud by representing myself to be a
 23 California licensed lawyer.”

24 2. Paragraph 3, lines 12-15: “Based on
 25 representations of Dennis Montgomery
 26 made to me while I was his lawyer, and
 27 based on my own legal and factual
 28 analysis while I served as counsel for

11 **OBJECTIONS:**

12 1. Lack of foundation. Flynn fails to
 13 present facts establishing that Dennis
 14 Montgomery (“Montgomery”) waived
 15 the attorney client privilege or that
 16 Montgomery falsely accused him of
 17 lying. Fed. Rules Evid. Rule 602.
 18 Improper opinion testimony. Flynn has
 19 not stated the facts upon which he relies
 20 or the principles and methods he applies
 21 to reach his conclusions. Fed. Rules
 22 Evid. Rule 702.

23 2. Attorney-client privilege.
 24 Representations purportedly made by
 25 Dennis Montgomery to Flynn are
 26 privileged. Fed. Rules Evid. Rule 501.
 27 Hearsay. Representations purportedly
 28

EVIDENCE:

Montgomery, I do not know, nor am I able to determine whether certain information *when* it came to me from Montgomery was either ‘classified’ or not ‘classified’.”

OBJECTIONS:

made by Montgomery to Flynn are inadmissible hearsay not subject to any exception. Fed. Rules Evid. Rule 801, 802. Irrelevant. Flynn’s claim that he does not know and can’t determine the status of information (either classified or unclassified) provided to him by Montgomery is not relevant to the Government’s Motion. Fed. Rules Evid. Rule 402.

3. Paragraph 4, page 3, lines 7-11:
 “[C]onsidering that I have already been defrauded of over six months of legal fees by Montgomery, it is akin to aiding Montgomery’s fraud against me by requiring substantial time and resources to accomplish just the *paper* file redactions and cleansing, while Montgomery and his partner continue to cheat me out of my time, and fees, and costs, and continue to maintain their files.”

4. Paragraph 6, lines 23-28: “I have been excessively burdened with responding to Montgomery’s opposition to payment of my legal fees and costs in these cases; responding to Montgomery’s San Diego

3. Lack of foundation. Flynn fails to present facts establishing that he has been “defrauded” or “cheated” by Montgomery. Fed. Rules Evid. Rule 602. Improper opinion testimony. Flynn has not stated the facts upon which he relies or the principles and methods he applies to reach his conclusions. Fed. Rules Evid. Rule 702.

4. Lack of foundation. Flynn fails to present facts establishing that he has been “excessively burdened” by his dispute with the Montgomery Parties over legal fees. Fed. Rules Evid. Rule

EVIDENCE:

fee arbitration petition; responding to Montgomery's Massachusetts Bar complaint; and responding to Montgomery's Los Angeles law suit and his multiple motions to obtain my files, notwithstanding this Court's explicit Orders.

Paragraph 7, lines 7-10: "Montgomery and his 'partner' defrauded me of over \$600,000, then relentlessly attacked me with a perjured declaration and comprehensive abuse of the judicial system, engineered by attorneys Klar and Pham . . ."

OBJECTIONS:

602. Irrelevant. Flynn's fee dispute with the Montgomery Parties is not relevant to the Government's Motion. Fed. Rules Evid. Rule 402. Improper opinion testimony. Flynn has not stated the facts upon which he relies or the principles and methods he applies to reach his conclusions. Fed. Rules Evid. Rule 702.

5. Lack of foundation. Flynn fails to present facts establishing that (i) Dennis Montgomery and his "partner" have defrauded and attacked him; (ii) Montgomery's declaration is "perjured;" and (iii) there has been any "comprehensive abuse of the judicial system." Fed. Rules Evid. Rule 602. Improper opinion testimony. Flynn has not stated the facts upon which he relies or the principles and methods he applies to reach his conclusions. Fed. Rules Evid. Rule 702.

**24 Supplemental Declaration of Michael Flynn in Response to Montgomery's Opposition to the
25 Government's Motion ("Supplemental Flynn Declaration")**

Plaintiffs object to the Supplemental Flynn Declaration in its entirety on the ground that Flynn lacks standing to file this declaration since the Government's Motion does not cause or threaten to cause him any injury.

1 Plaintiffs further object to the Supplemental Flynn Declaration on the following grounds.

2 **EVIDENCE:**

3 6. Paragraph 4, lines 7-9: “[i]t is obvious
4 to a first grader, that Klar’s statements
5 limiting the protected material in my
6 files to emails and a ‘few’ originals are
7 outright false.”

6.

Lack of foundation. Flynn fails to present facts establishing that any statements made by Deborah Klar in her declaration in support of the Montgomery Parties’ Opposition to the Government’s Motion are false. Fed. Rules Evid. Rule 602. Improper opinion testimony. Flynn has not stated the facts upon which he relies or the principles and methods he applies to reach his conclusions. Fed. Rules Evid. Rule 702.

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14 7. Paragraph 4, lines 9-10: “The
15 government knows what the ‘few’
16 originals references in connection with
17 the August 17th transcript, as does Klar.”

7.

Lack of foundation. Flynn fails to present facts establishing that he has personal knowledge of the Government’s or Deborah Klar’s state of mind. Further, Flynn fails to present facts establishing what the “originals” referenced in the August 17th transcript actually consist of. Fed. Rules Evid. Rule 602.

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23 8. Paragraph 6, line 26: “Klar’s Opposition
24 is simply dishonest.”

8.

Lack of foundation. Flynn fails to present facts establishing that the opposition brief filed by the Montgomery Parties to the Government’s Motion and the supporting declaration of Deborah Klar

EVIDENCE:OBJECTIONS:

9. Paragraph 8, lines 18-21: "Klar's
 9 suggestion that paper copies of my email
 10 files be turned over to the Court and the
 11 electronic version destroyed is thus not
 12 only deceitful, it does not resolve the
 13 redaction of protected information, and
 14 it is designed to perpetrate and create
 15 more issues and problems involving
 16 Montgomery's potential computer
 17 related 'fabrications.'"

9. Lack of foundation. Flynn fails to
 present facts establishing that: (i)
 Montgomery has engaged in any
 "computer related fabrications;" (ii)
 Flynn has personal knowledge of
 Montgomery's computer related
 activities; and (iii) any suggestions made
 by Deborah Klar in connection with the
 Montgomery Parties' opposition to the
 Government's Motion are "deceitful" or
 "designed to perpetrate and create more
 issues and problems." Fed. Rules Evid.
 Rule 602. Improper opinion. Flynn has
 not stated the facts upon which he relies
 or the principles and methods he applies
 to reach his conclusions. Fed. Rules
 Evid. Rule 702.

25 10. Paragraph 8, lines 21-23 and lines 26-
 26 28: "He [Dennis Montgomery] has
 27 already been accused of fabricating
 28 emails by the Trepp parties. Klar's plan

10. Lack of foundation. Flynn fails to
 present facts establishing that: (i)
 Montgomery has fabricated emails; (ii)
 Flynn's files have been accessed or that

EVIDENCE:

may put the fox inside the hen house. Additionally, I have compelling reasons to believe that my computers have been “accessed.” There are files missing; and there may be files altered.

OBJECTIONS:

Flynn has reason to believe this; (iii) that Flynn’s files are missing or altered or that Flynn has reason to believe this; and (iv) that Montgomery had anything to do with any purported access, removal, or alteration of Flynn’s files. Fed. Rules Evid. Rule 602. Improper opinion.

Flynn has not stated the facts upon which he relies or the principles and methods he applies to reach his conclusions. Fed. Rules Evid. Rule 702.

11. Paragraph 8, lines 23-26: “I intend to sue those responsible for the outrageous abuse of the judicial process Montgomery and Klar perpetrated, (filing a false declaration to obtain jurisdiction is a per se abuse of process, among other torts), as well as other claims.”

11. Lack of foundation. Flynn fails to present facts establishing that: (i) there has been an abuse of the judicial process by Montgomery or his counsel; and (ii) Montgomery filed a false declaration. Fed. Rules Evid. Rule 602. Improper opinion. Flynn has not stated the facts upon which he relies or the principles and methods he applies to reach his conclusions. Fed. Rules Evid. Rule 702.

- 23 12. Paragraph 8, page 4, lines 1-9: “Klar’s plan enables Montgomery to maintain, and/or fabricate, and or alter emails, and/or electronic documents, while mine will have been destroyed. As of May-June, 2007, Montgomery was then

12. Lack of foundation. Flynn fails to present facts establishing that: (i) Montgomery was engaged in any “computer related behavior” leading to unspecified “potential problems;” and (ii) Flynn has personal knowledge of

1 EVIDENCE:

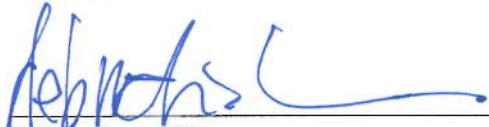
2 engaged in computer related behavior
3 that is related to these potential
4 problems. Montgomery's direct
5 communications with third party media
6 individuals, (not protected by the
7 attorney-client privilege), insisting that
8 copies of emails that he had previously
9 turned over to them, in some cases
10 without my prior knowledge, NOT be
11 shared with Trepp's counsel, because
12 then Trepp would know the exact '*time*'
13 of a particular email is illustrative of the
14 problem. Montgomery cannot be trusted
15 with *any* electronic information."

16
17 OBJECTIONS:

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19 Montgomery's purported "computer
20 related behavior." Fed. Rules Evid. Rule
21 602. Attorney-client privilege.
22 Statements purportedly made by
23 Montgomery to Flynn regarding emails
24 are protected by the attorney-client
25 privilege. Fed. Rules Evid. Rule 501.
26 Hearsay. Statements purportedly made
27 by Montgomery to Flynn regarding
28 emails are inadmissible hearsay not
 subject to any exception. Fed. Rules
 Evid. Rule 801, 802. Improper opinion.
 Flynn has not stated the facts upon which
 he relies or the principles and methods
 he applies to reach his conclusions. Fed.
 Rules Evid. Rule 702.

29
30 Dated: January 10, 2008

31 LINER YANKELEVITZ
32 SUNSHINE & REGENSTREIF LLP

33 By: 

34 Deborah A. Klar
35 Tuneen E. Chisolm
36 Attorneys for Plaintiffs
37 DENNIS MONTGOMERY and the
38 MONTGOMERY FAMILY TRUST

